

**KEN THERRIEN
413 NORTH SECOND STREET
YAKIMA, WA 98901
509.457.5991**

Attorney for:
MONICA PESINA

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
(Honorable Salvador Mendoza, Jr.)**

UNITED STATE OF AMERICA,) NO. 19-CR-6063-SMJ-1
Plaintiff,) 20-CR-0005-SMJ-1
vs.)
DEFENDANT'S SENTENCING
MEMORANDUM
MONICA PESINA,)
Defendant.)

TO: WILLIAM HYSLOP, United States Attorney
AND TO: STEPHANIE A. VAN MARTER, Assistant United States Attorney
AND TO: SEAN CARTER, United States Probation Officer

Monica Pesina, by and through her attorney of record, Ken Therrien hereby submits this sentencing memorandum in preparation for her sentencing hearing scheduled for September 23, 2021 at 10:45 a.m. in Richland, Washington. At the time of her sentencing, Ms. Pesina will request that she be allowed to serve the sentence imposed by this Court at a Federal Correctional Facility located nearest to Washington State.

1 **I. Base Offense Level & Enhancements**

2 Monica Pesina asserts that the Base Offense Level computation has been
 3 correctly calculated at 32. Ms. Pesina agrees that a two-level increase pursuant to
 4 USSG §2D1.1(b)(2) is correct and with a two-level reduction for acceptance of
 5 responsibility making her total offense level is 31. Ms. Pesina agrees that her criminal
 6 history score is "3" which places her in Criminal History Category II Based on these
 7 calculations Monica Pesina confirms the following guideline calculation:

8

<u>Defense guideline calculation.</u>	
1. Base Offense Level	32
2. Specific Offense Characteristics	+ 2
3. Adjusted Offense Level	34
4. Acceptance of Responsibility	
(U.S.S.G. § 3E1.1(a))	-2
(U.S.S.G. § 3E1.1(b))	-1
5. Total Offense Level	31
6. Advisory Guideline Range	121-151 months

19

20 **II. Departures**

21 Monica Pesina has plead guilty to the criminal behavior identified in her Plea
 22 Agreements pursuant to Rule 11(c)1(C) with an agreed standard range of 121-151
 23 months. Monica Pesina at the time of sentencing will be requesting a 120 month
 24 sentence which is one month below the guideline range.

III. 18 U.S.C. 3553(a)

18 § USC 3553 sets out factors to be considered by the Court when determining what sentence would be “sufficient but not greater than necessary,” to comply with the purposes of the statute. While no one factor is necessarily more determinative than the other, 18 § USC 3553 provides a sequential list of factors to assist the sentencing Court in its analysis.

The District Court may not presume that the guideline range is reasonable, nor should the guideline factors be given any more or less weight than any other. **United States v. Carty**, 520 F.3d 984, 991 (9th Cir. 2008) en banc, citing Rita¹, Gall², and Kimbrough³. The guidelines are but one factor to be taken into account in arriving at an appropriate sentence. **Id.**

Nature of the Offense

The criminal behavior to which Ms. Pesina has plead guilty is described in her plea agreement.

The History and Characteristics of the Defendant

During her PSIR interview Ms. Pesina stated her childhood was "not good." Her father died when she was just two years old. Her father died from injuries suffered while fixing his motor vehicle the supports gave way and crushed him to death. Her mother had a series of boyfriends before she married Jesse Rubio when Monica was 8 or 9 years old. Ms. Pescina reports of physical, sexual, and emotional abuse of at the hands of Mr. Rubio and her brothers are identified in paragraphs 105-

¹ Rita v. United . Her mother.(2007)

² Gall v. United States, 127 S.Ct. 2833 (2007)

³ Kimbrough v. United States, 128 S.Ct. 558 (2007)

1 108 pages(15-16 of the PSIR.) This abuse has been also reported by her brother Troy
 2 during his presentence investigation in his 2003 matter. (See paragraph 107 page 16.)

3 Monica always lived in the Walla Walla area. Monica entered into a
 4 relationship-with Michael Hively when she was 17 years old and moved in with her
 5 Mr. Hively's parents, Monica had a son named Damion with Hively and he is now 25
 6 years old. From Damion, Monica has a grandson. Her next relationship was with
 7 Joshua Waldrop during which she had two children AW age 12 and JW age 10.
 8 Monica's relationship would eventually end because of Waldrop struggles with
 9 various psychotic disorders and drug abuse.

10 One of the most traumatic incidents in Monica's life was the death of her
 11 boyfriend, Johnny Posi on Aug 27 2002. Mr. Posi, was 20 years old when he shot
 12 himself in the Temple, in the basement of the house where her mother now lives.
 13 Monica tried to perform CPR on him while she was waiting for the ambulance to
 14 arrive. Monica ended up being sedated at the hospital for the emotional trauma she
 15 suffered because of the incident.

16 Monica was also the victim of another traumatic experience when a friend
 17 drugged her and keep her against her will for 3 days. Monica has no memory of what
 18 happened to her but she suspects she was sexually abused. The abuse ended when
 19 Monica's location was discovered her boyfriend. This happened when Monica and
 20 her children were evicted from her apartment. Monica and her children stayed with a
 21 friend GB who also had children who went to the same school as Monica's children.
 22 Monica remembers GB giving her something to drink and three days later recalls
 23 being discovered by her boyfriend. As the facts began to unfold Monica discovered
 24 that she had be keep in a room for three days, while GB took her children to school
 25 with his children saying nothing to anyone about what he had done. When GB's
 26
 27
 28
 29

1 brother and sister discovered what GB had done they urged Monica to report the
2 incident to the police which, she declined to do. Later in their relationship Monica
3 reports that her boyfriend would beat Monica because of the things he believed that
4 GB did to her.

5 Monica Pesina's drug use started when she was 12 years old smoking
6 marijuana with her friends. Monica reports starting to use meth in 2002. Monica did
7 do intense outpatient treatment in 2007- 2008 after she got out of prison. Monica
8 stayed clean and sober until 2014 where she used cocaine at someone's birthday party
9 which caused her to relapse back to her previous lifestyle.

11

12 **Promote Respect for the Law, Adequate Deterrence and Protection of the**
13 **Public.**

14 Monica Pesina understands, as her criminal history increases, so does her
15 exposure to more serious legal consequences if she continues down this path.
16 Hopefully, Ms. Pesina will take advantage of the programs and resources available to
17 her in Federal Prison to give her a better opportunity to leave her old lifestyle behind
18 and build a better life for herself and her children.

20

21 **Prior Contact with the Criminal Justice System**

22 Monica Pesina believes the previous sections of the PSIR sufficiently addresses
23 this issue.

25

26 **III. Conclusion**

27 18 USC § 3553 instructs the sentencing court to impose a sentence "sufficient
28 but not greater than necessary" to comply with the purposes set forth in paragraph 2
29

1 of its subsection. Based upon the information provided Monica Pesina respectfully
2 request that this Court impose a sentence of 120 months.

3

4 Dated this 31th day of August, 2021.

5

6

7 /s/ Ken Therrien

8 KEN THERRIEN, WSBA #20291
9 Attorney for Monica Pesina
10 413 North Second Street
11 Yakima, WA 98901
12 (509) 457-5991
Fax: (509) 457-6197
kentherrien@msn.com

13

14

15 **CERTIFICATE OF SERVICE**

16 I hereby certify under penalty of perjury of the laws of the State of Washington that on
17 August 31, 2021, I electronically filed the foregoing with the Clerk of the Court using
18 the CM/ECF System which will send notification of such filing to the following:

- 19
- 20
- 21
- Stephanie Van Marter, Assistant United States Attorney
 - Sean Carter, United States Probation Officer

22

23 s/ Ken Therrien

24 KEN THERRIEN, WSBA #20291
25 Attorney for Monica Pesina
26 413 North Second Street
27 Yakima, WA 98901
28 (509) 457-5991
Fax: (509) 457-6197
kentherrien@msn.com